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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,401	08/27/2001	Francois Marquis	33904	4354
116 7590 08/20/2008 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
FAULK, DEVONA E				
ART UNIT		PAPER NUMBER		
2615				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/940,401

Applicant(s)

MARQUIS ET AL.

Examiner

DEVONA E. FAULK

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Remarks

1. The applicant amended claim 1 with language previous indicated as allowable and recited in claim 5.
2. The indicated allowability of claim 5 is withdrawn in view of the newly discovered reference(s) to Kuznicki and Mathieu. Rejections based on the newly cited reference(s) follow.
3. Claims 5 and 14 are cancelled.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2-3,6,8-10,12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznicki et al. (US 4,972,439) in view of Mathieu et al. (US 5,852,636).

Regarding claim 1, Kuznicki discloses a wireless transmitter (transmitter illustrated in Figure 3) comprising:

An antenna (Figure 3);

A transmitter signal generator unit generating a signal to be transmitted at an output and having a control input, a control signal applied to said control input controlling at least one of a frequency band and of a power level of said signal to be

transmitted (216 is the transmitter signal generator; Kuznicki discloses a decoder whose output controls the frequency or power selection (Figure 3; column 5, lines 45-55);

Said output of said generation being operationally connected to said antenna (Figure 3);

An audio signal/control signal decoder unit (decoder 208 outputs signals that control the frequency or power selection, a channel select signal and a power control signal of which either can read on control signal, column 5, lines 45-55; column 8, lines 47-57), said decoder unit generating said control signal at an output of said decoder unit in response to an encoded audio signal at an input of said decoder unit (the signal that is input into the decoder is an encoded audio signal, Figure 1 shows that the signal input into the transmitter illustrated in Figure 3 comes from a telephone source and also the telephone signal is processed through a modem which transmits digital data over telephone by modulating the data into an audio signal, therefore the decoder outputs in response to an encoded signal; column 5, lines 35-43);

Said output of said decoder unit being operationally connected to said control input of said generator unit (Figure 3; column 5, lines 45-55);

a modulator unit (212, Figure 3; column 5, line 59-column 6, line 10) with a carrier frequency signal input and an output (Figure 3; column 6, lines 12-25), the output of the modulator unit being operationally connected to said output of said generator unit and having a modulation input, said modulation input being operationally connected to said input for said encoded audio signal (the modulator is operationally connected to

the output of the transmitter and to the telephone signal which is the input signal (Figures 1 and 3; column 2, lines 55-67; column 5, lines 45-55).

Kuznicki discloses a modulator but fails to disclose that the modulator is included in the generator. Mathieu discloses a transmitter that includes a modulator (Figure 1, transmitter 10 includes modulator 20; column 5, lines 8-10).

It would have been obvious to modify Kuznicki to have the transmitter include a modulator for the benefit of providing a transmitter that can adjust, regulator or change the frequency.

All elements of claims **2-4,6,8,10,12** are comprehended by the rejection of claim 1 (modem is an internet connection device).

Regarding claim 9, Kuznicki discloses a decoder that receives an encoded audio signal. Kuznicki fails to disclose that the encoded audio signal is in a frequency range of 100 Hz to 20kHz. The examiner asserts that this is a matter of design choice. It would have been obvious to modify Kuznicki so that the encoded audio signal is in frequency range of 100 Hz to 20 kHz in order to meet some design specification.

Regarding claim 13, Kuznicki discloses a hearing system (pager system) comprising:

An ear device (implicit that the pager has a transducer that produces sound to notify the user when he or she has received a page) with an output electrical to ,12mechanical converter (implicit that the pager has a transducer that produces sound to notify the user when he or she has received a page) and with a wireless receiver

(pagers are the receivers, Figure 1; column 3, lines 48-52), the output thereof being operationally connected to said electrical to mechanical converter (implicit that the pager has a transducer that produces sound to notify the user when he or she has received a page);

A wireless transmitter according to one of the claims 1 to 12 (See Kuznicki and Mathieu as applied above apropos rejection of claim 1), a signal transmitted from said wireless transmitter being received and demodulated at said ear device and acting on said electrical to mechanical converter (column 3, lines 45-55).

6. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznicki et al. (US 4,972,439) in view of Mathieu et al. (US 5,852,636) in further view of Koike (US 6,778,814).

Regarding **claim 7**, Kuznicki fails to disclose of a wireless transmitter further comprising at least one microphone, an output thereof being operationally connected to said input of said decoder unit. Koike teaches of wireless transmitter further comprising at least one microphone, an output thereof being operationally connected to said input of said decoder unit (Figure 2). It would have been obvious to modify Kuznicki by incorporating a microphone in order to provide the capability of wirelessly transmitted voice signals.

7. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznicki et al. (US 4,972,439) in view of Mathieu et al. (US 5,852,636) in further view of McGreevy (US 5,319,716).

Regarding claim 11, Kuznicki as modified discloses controlling the selection of the carrier frequency of the signal to be transmitted (column 5, lines 45-55; column 8, lines 47-57). Kuznicki as modified fails to disclose a manually operable selection unit with an output operationally connected to a control input of a carrier frequency generator unit.

McGreevy discloses a manually operable selection unit with an output operationally connected to a control input of a carrier frequency generator unit (manually controllable reactive components 54, Figure 1; column 3, lines 2-7).

It would have been obvious to modify Kuznicki to include a manually operable selection unit in order to give the user some control over the system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVONA E. FAULK whose telephone number is (571)272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devona E. Faulk/
Examiner, Art Unit 2615